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UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

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MIRAGE PUTTING GREENS
INTERNATIONAL, INC., an Arizona
corporation, and LAZYLAWN
INTERNATIONAL, INC., an Arizona
corporation,

Plaintiffs,

vs.

JOE PANTEL, an individual; and doing
business as SURFSIDE CONCEPTS, a foreign
entity; DOES I through X; and ROE
CORPORATIONS I through X,

Defendants.

Case No.: 2:08-cv-00167-RLH-LRL

ORDER

(Motion to Dismiss—#12)

Before the Court is Defendant Joe Pantel's **Motion to Dismiss Complaint or
Alternatively Motion for a More Definite Statement** (#12), filed December 24, 2008. The
Court has also considered Plaintiffs Mirage Putting Greens International and Lazylawn
International's Opposition (#13), filed January 12, 2009, and Defendant's Reply (#14), filed
January 16, 2009.

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BACKGROUND

Mirage Putting and Lazylawn are Arizona corporations with their principal places of business in Clark County, Nevada. Surfside Concepts is a California corporation and Joe Pantel is a resident of Orange County, California. Plaintiffs allege in the Complaint that Pantel “do[es] business as Surfside Concepts.” (Dkt. #5, Am. Compl. ¶ 6.) Although neither party expressly indicates exactly what relationship exists between Pantel and Surfside Concepts, Pantel is at least an agent of the company, if not its executive or principal officer.

In June 2007, Plaintiffs and Surfside Concepts entered into two licensing agreements. In the first contract, Surfside Concepts agreed to market, sell, and install artificial putting greens and lawn grass designed by Mirage Putting. In the second contract, Surfside Concepts agreed to market, sell, and install artificial palm trees, pine trees, and plants designed by Lazylawn. Pantel signed both contracts on behalf of Surfside Concepts.

According to Plaintiffs, Pantel agreed to pay \$2,500 to have Plaintiffs train two of his employees regarding the sale and installation of their products. Plaintiffs allege their bank returned Pantel’s check as unpaid. Mirage Putting and Lazylawn also allege that Pantel’s employees took numerous trees and other products back to California without paying for them. Plaintiffs assert Pantel owes them over \$7000 for these supplies. Plaintiffs also claim Pantel and Surfside Concepts “retained all of the information and supplies from Plaintiffs, which have not been paid for, and [used] photos stolen from Plaintiffs’ websites to further Defendant’s own business.” (*Id.* ¶ 14).

In early 2008, Plaintiffs brought suit against Pantel and Surfside Concepts alleging state claims for breach of contract, breach of the implied duty of good faith and fair dealing, breach of fiduciary duty, unjust enrichment, unfair trade practices, declaratory relief, demand for accounting, and interference with prospective business advantage. Plaintiffs also alleged federal claims for copyright infringement, inducement of copyright infringement, contributory copyright

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1 infringement, and vicarious copyright infringement. Although Plaintiffs assert these federal causes
2 of action, they allege in their Complaint only that this Court has federal diversity jurisdiction.

3 Pantel has asked the Court to dismiss this Complaint, alleging that Plaintiffs cannot
4 meet the \$75,000 jurisdictional requirement. In the alternative, Pantel moves for a more definite
5 statement under Rule 12(e), asking for Plaintiffs to itemize the lost income and the damages
6 caused by the use of Plaintiffs' alleged copyrighted items. (Dkt. #12, Mot. to Dismiss, 3.) Pantel
7 also asks the Court to dismiss him from this case, or in the alternative, for a more definite
8 statement indicating why he has been named as an individual defendant. For the reasons discussed
9 below, Pantel's Motion is denied.

10 DISCUSSION

11 I. Motion to Dismiss

12 Rule 12(b)(6) of the Federal Rules of Civil Procedure provides that a court may
13 dismiss a complaint for "failure to state a claim upon which relief can be granted." In order to
14 withstand a motion to dismiss, a complaint must contain factual allegations that are sufficient "to
15 raise a right to relief above the speculative level." *Bell Atl. Corp. v. Twombly*, 127 S. Ct. 1955,
16 1965 (2007). In ruling on a 12(b)(6) motion, courts assume all factual allegations in the complaint
17 are true and construe them in the light most favorable to the plaintiff. *Epstein v. Wash. Energy*
18 *Co.*, 83 F.3d 1136, 1140 (9th Cir. 1999). However, a court does not assume the truth of legal
19 conclusions merely because the plaintiff casts them in the form of factual allegations. *Warren v.*
20 *Fox Family Worldwide, Inc.*, 328 F.3d 1136, 1139 (9th Cir. 2003).

21 II. Motion to Dismiss for Lack of Jurisdiction

22 Pantel asks the Court to dismiss the case because, as a legal certainty, Plaintiffs
23 cannot recover the \$75,000 jurisdictional requirement. The Court does not need to specifically
24 address this allegation because it has subject matter jurisdiction by virtue of Plaintiffs' federal
25 copyright claims. Although the Court is not entirely certain why Plaintiffs asserts federal
26 jurisdiction without specifically mentioning their federal causes of action, the fact remains that

1 they have alleged viable claims under applicable federal copyright statutes. Plaintiffs have alleged
 2 that Defendants “publicly display[ed] . . . [their] registered copyrighted photographs” without
 3 permission. (Dkt. #5, Am. Compl. ¶ 55.) Thus, Plaintiffs have properly alleged federal question
 4 jurisdiction. *See, e.g., Rano v. Sipa Press, Inc.*, 987 F.2d 580, 584 (9th Cir. 1993) (holding that
 5 federal jurisdiction is appropriate when a plaintiff brings an actionable federal copyright claim).

6 In addition to denying Pantel’s Motion to Dismiss for lack of jurisdiction, the Court
 7 also denies his request for a more definite statement. Under Rule 12(e) of the Federal Rules of
 8 Civil Procedure, “[a] party may move for a more definite statement of a pleading to which a
 9 responsive pleading is allowed but which is so vague or ambiguous that the party cannot
 10 reasonably prepare a response.” Fed. R. Civ. P. 12(e). The Court finds that, as far as federal
 11 jurisdiction is concerned, Plaintiffs’ complaint is neither vague nor ambiguous. Plaintiffs have
 12 alleged federal claims giving rise to proper federal jurisdiction. For this reason, it is not necessary
 13 for the court to determine what damages Plaintiffs might be able to recover. Disputes regarding
 14 the value of Plaintiffs’ claims must be resolved by the finder of fact.

15 **III. Motion to Dismiss Pantel**

16 Pantel also asks the Court to dismiss him from this case, alleging that Plaintiffs did
 17 not intend to sue him in his individual capacity, but are instead bringing claims solely against
 18 Surfside Concepts. In the alternative, Pantel asks the Court to require Plaintiffs to make a more
 19 definite statement and assert the grounds for which they seek claims against him as a individual.
 20 Plaintiffs argue in response that they have, in fact, brought claims against Pantel in his individual
 21 capacity.

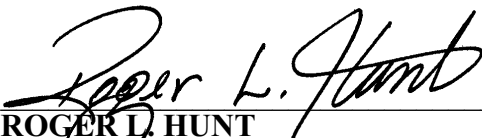
22 The Court agrees with Plaintiffs: the Complaint sufficiently alleges claims against
 23 Pantel. Although Plaintiffs use the term “PANTEL” throughout their Complaint without
 24 expressly distinguishing between the two Defendants, Plaintiffs state at the beginning of the
 25 Complaint that “PANTEL” applies to “JOE PANTEL, an individual and d/b/a SURFSIDE
 26 CONCEPTS.” (Dkt #5, Am. Compl.) Thus, Plaintiffs’ claims are brought against both Pantel and

1 Surfside Concepts. The Court finds that the Complaint is sufficient on its face to withstand
2 Pantel's Motion to Dismiss. It also determines that a more definite statement is not needed.
3 Pantel is on notice as to the claims against him. The scope and merit of each claim will be
4 determined through discovery and the litigation process.

5 **CONCLUSION**

6 Accordingly, and for good cause appearing,
7 IT IS HEREBY ORDERED that Defendant Joe Pantel's Motion to Dismiss (#12)
8 is DENIED in its entirety.

9 Dated: March 23, 2009.

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12 **ROGER L. HUNT**
13 **Chief United States District Judge**
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